

Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
The Library of Congress  
Washington, D.C.

*In re*

**DETERMINATION OF RATES AND TERMS  
FOR MAKING AND DISTRIBUTING  
PHONORECORDS (Phonorecords III)**

**Docket No. 16-CRB-0003-PR  
(2018-2022) (Remand)**

**WRITTEN SUPPLEMENTAL REMAND TESTIMONY OF RISHI MIRCHANDANI**

**(On behalf of Amazon.com Services LLC)**

1. My name is Rishi Mirchandani, and I am the Head of Content Licensing and Strategy for the digital-music business of Amazon.com Services LLC (“Amazon”).
2. I am responsible for developing and executing Amazon’s content acquisition strategy. This entails securing the necessary sound recording, music publishing, and other content rights to operate our various digital music services. In addition, I oversee our Strategy team, which drives various strategic initiatives, and our Royalties and Reporting team, which is responsible for developing the systems and software to calculate, process and report royalties to our content partners and third parties. I have been in this position for over eight years.
3. I submitted written testimony in this proceeding on three previous occasions and testified live during the hearing on March 15-16, 2017.<sup>1</sup>
4. I am submitting this testimony to address the facts regarding the royalties Amazon paid from January 2018 to September 2020, a period during which the Majority’s initial ruling in

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<sup>1</sup> Amazon Trial Ex. 1 (Mirchandani Written Direct Testimony); Amazon Trial Ex. 111 (Mirchandani Written Rebuttal Testimony); Rishi Mirchandani Supplemental Testimony (Apr. 1, 2021) (“Rishi Mirchandani Written Direct Remand Testimony” or “Mirchandani WDRT”).

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*Phonorecords III*, 84 Fed. Reg. 1918 (Feb. 5, 2019) was in effect (the “P3 Rate Activity Period”).<sup>2</sup> I understand that the Copyright Owners have submitted rebuttal testimony from Dr. Jeffrey A. Eisenach that claims that these facts show Amazon was not “worse off” as a result of the Majority’s ruling during the P3 Rate Activity Period.<sup>3</sup> I disagree.

5. The Majority’s initial ruling in *Phonorecords III* changed the rates and rate structure for portable subscription offerings, such as Amazon Music Unlimited (“Unlimited”). Under the prior rate structure, these rates were calculated using the greater of either a percentage of the music service’s revenues or a percentage of the music service’s Total Content Cost (“TCC”) capped at \$0.80 per-subscriber. *Phonorecords III* raised the applicable percentages for both the revenue and TCC prongs, and removed the per-subscriber cap on the TCC prong. Amazon’s mechanical royalties for Unlimited individual, family, and student plans (“Unlimited I/F/S”) materially increased during the P3 Rate Activity Period because of these changes.<sup>4</sup>

6. As I explained in my earlier testimony, the Majority’s initial ruling in *Phonorecords III* did not cause Amazon’s sound recording royalty costs or total royalty costs to decrease.<sup>5</sup> While the percentage of Unlimited I/F/S revenue [REDACTED]

[REDACTED]<sup>6</sup>

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<sup>2</sup> Remand Written Rebuttal Testimony of Jeffrey A. Eisenach (“Eisenach RWRT”) ¶ 11. Amazon paid mechanical royalties consistent with the Majority’s initial ruling in *Phonorecords III* from January 2018 to October 2020 – 34 months. Mirchandani WDRT ¶ 9. However, because I understand Dr. Eisenach reviewed only Amazon’s royalty payments from January 2018 to September 2020, I address only those 33 months in this testimony and refer to them as the “P3 Rate Activity Period.”

<sup>3</sup> Eisenach RWRT ¶ 9.

<sup>4</sup> Mirchandani WDRT ¶¶ 8, 25.

<sup>5</sup> *Id.* ¶¶ 13-25.

<sup>6</sup> *Id.* ¶¶ 14-25.

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Moreover, [REDACTED] Amazon's total royalty costs [REDACTED] During September 2020, the last month of the P3 Rate Activity Period, Amazon paid [REDACTED] of Unlimited I/F/S revenue in royalties.<sup>7</sup>

7. My testimony below is based on my personal knowledge, on information made available to me in the course of performing my duties at Amazon, on my work experience in the music industry, and on my review of the documents attached as exhibits to this written testimony. To the extent that the facts and matters set out below are within my knowledge, they are true. To the extent I have relied upon the information provided by others, it is true to the best of my knowledge, information, and belief.<sup>8</sup>

**I. *PHONORECORDS III* [REDACTED] AMAZON'S MECHANICAL ROYALTY COSTS**

8. Amazon's mechanical royalties for Unlimited I/F/S [REDACTED] between 2017, when the *Phonorecords II* rates were in effect, and the P3 Rate Activity Period. During 2017, Amazon paid approximately [REDACTED] in mechanical royalties per month on average.<sup>9</sup> During the P3 Rate Activity Period, Amazon paid [REDACTED] in mechanical royalties per month on average.<sup>10</sup>

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<sup>7</sup> Ex. 1.

<sup>8</sup> All of the charts and calculations in my testimony and Exhibit 1 were prepared using data from Amazon's Mechanical Licensing Collective ("MLC") reporting for the period from January 2017 to September 2020. Because Amazon updated the revenue figures in its Unlimited I/F/S reports on August 26, 2021, the data I use will not perfectly match the data I understand that the Copyright Owners obtained from the MLC in the winter or spring of 2021. Any differences will be small and not material to the trends I discuss because the correction increased Amazon's reported revenues for Unlimited I/F/S by [REDACTED] or less for each month. The data from Amazon's MLC reporting used in Exhibit 1 is compiled in Exhibit 2.

<sup>9</sup> Ex. 1.

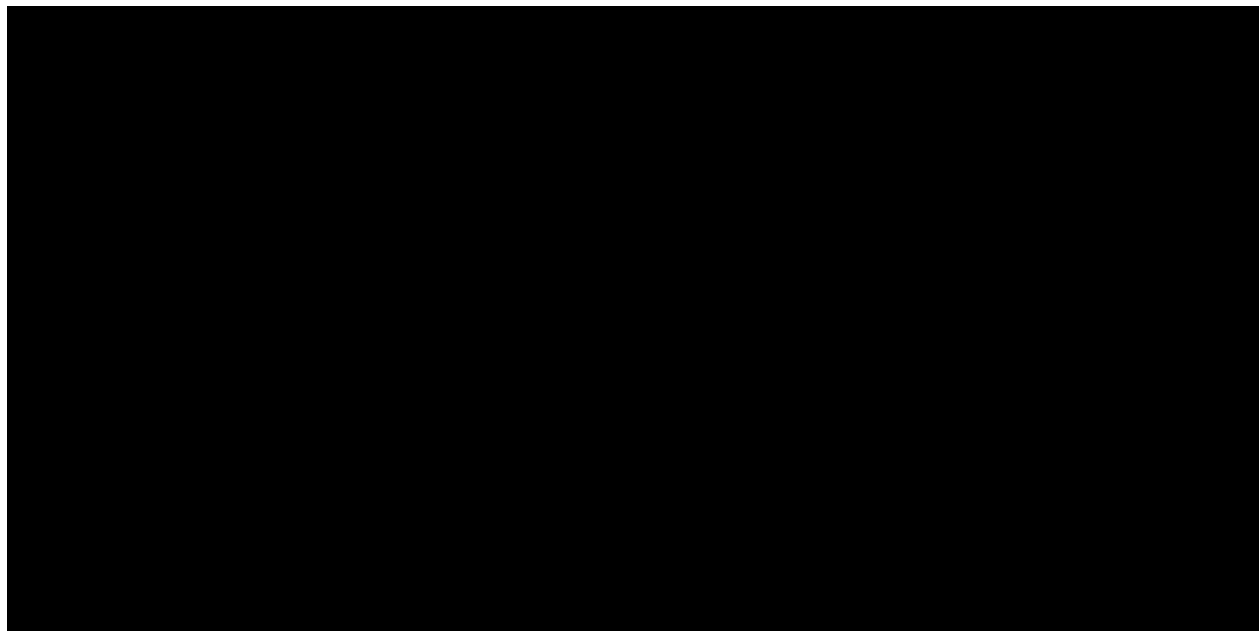
<sup>10</sup> *Id.*

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9. Figure 1 shows Amazon's mechanical royalty costs for Unlimited I/F/S each month from January 2017 to September 2020. In 2017, mechanical royalties [REDACTED]

[REDACTED] During the P3 Rate Activity Period, [REDACTED]  
[REDACTED]

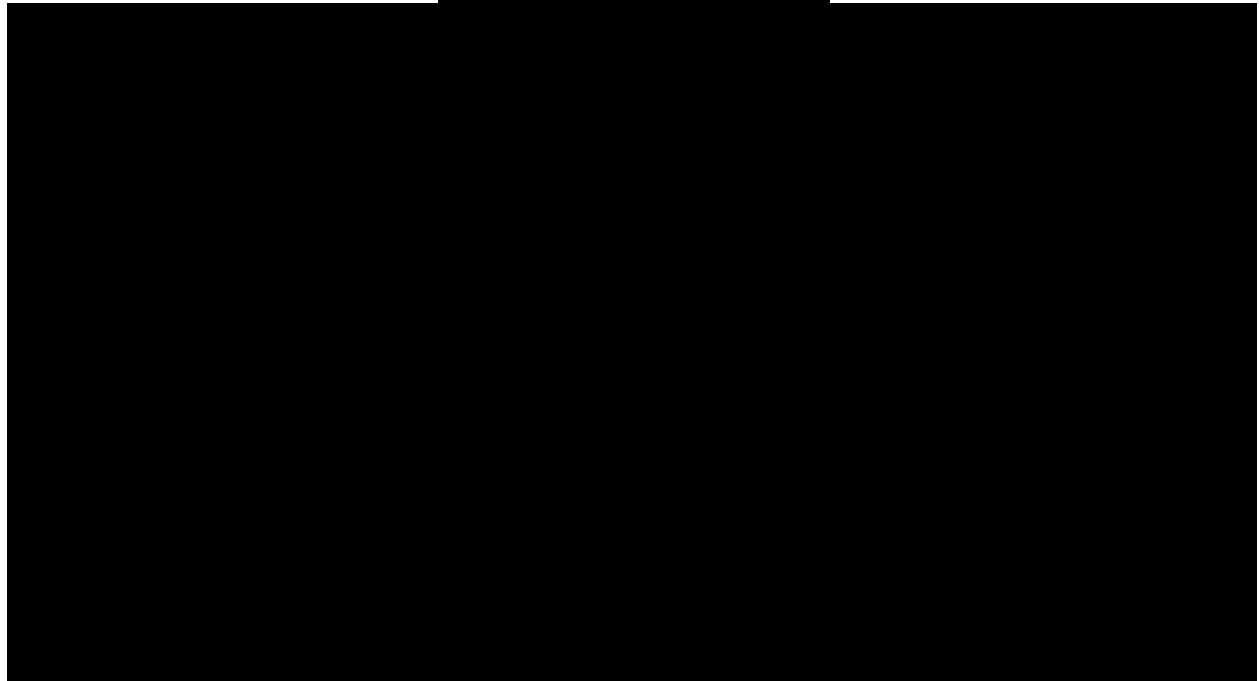
Figure 1. [REDACTED]  
[REDACTED]  
[REDACTED]



10. Figure 2 shows Amazon's average monthly mechanical royalty costs for Unlimited I/F/S during 2017 and each year of the P3 Rate Activity Period as a percentage of revenue. [REDACTED]

[REDACTED] In 2017, Amazon paid [REDACTED] of its revenue in mechanical royalties. During the P3 Rate Activity period, mechanical royalties [REDACTED]

Figure 2. [REDACTED]



11. As I explained in my prior testimony, the removal of the per-subscriber cap [REDACTED] Amazon's mechanical royalty costs for Unlimited I/F/S during the P3 Rate Activity Period. If the Majority had placed a per-subscriber cap on TCC of \$0.80 for individual accounts, 1.5 times that amount for family plans, and half that amount for student plans, Amazon's mechanical royalty costs [REDACTED] [REDACTED]<sup>11</sup> I understand that Dr. Eisenach does not dispute that Amazon paid [REDACTED] during the P3 Rate Activity Period as a result of the Majority's decision to remove the per-subscriber cap on TCC. Indeed, Dr. Eisenach admits that the per-

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<sup>11</sup> Mirchandani WDRT ¶¶ 8-12 & Ex. A [REDACTED]

[REDACTED] Dr. Eisenach reads Exhibit A to my prior testimony to suggest that Amazon failed to report certain subscribers to MLC. Eisenach RWRT, app. C at C-1. That reading is incorrect. Dr. Eisenach has misunderstood the calculations necessary to apply different caps to family, student, and individual plans. See Mirchandani WDRT ¶ 11.

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subscriber cap on TCC [REDACTED] Amazon paid during the last six months of 2017, when *Phonorecords II* was still in effect.<sup>12</sup>

12. Amazon's all-in musical-works royalty costs – i.e., the sum of Amazon's mechanical and performance royalties – for Unlimited I/F/S [REDACTED] between 2017 and the P3 Rate Activity Period. In 2017, Amazon paid approximately [REDACTED] [REDACTED] in total musical-works royalties per month on average.<sup>13</sup> During the P3 Rate Activity Period, Amazon paid [REDACTED] in total musical-works royalties per month on average.<sup>14</sup> Over the course of the P3 Rate Activity Period, Amazon's all-in musical-works royalties [REDACTED]<sup>15</sup>

**II. *PHONORECORDS III* DID NOT CAUSE AMAZON'S SOUND RECORDING OR COMBINED ROYALTY COSTS TO DECREASE**

13. Amazon's sound recording royalty costs for Unlimited I/F/S [REDACTED] [REDACTED] during the entirety of 2017 and the P3 Rate Activity Period, consumed between [REDACTED] of Amazon's Unlimited I/F/S monthly revenues.

14. Figure 3 shows [REDACTED] Amazon's sound recording royalty costs for Unlimited I/F/S between January 2017 and September 2020.

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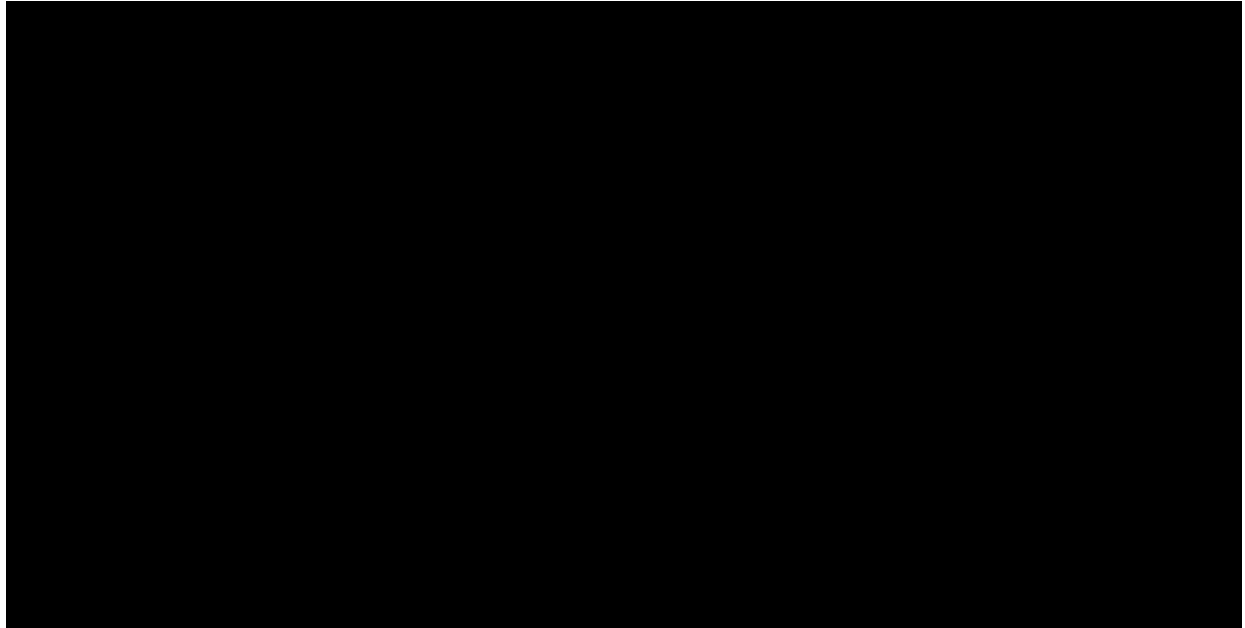
<sup>12</sup> Eisenach RWRT ¶ 72 & n.86 [REDACTED].

<sup>13</sup> Ex. 1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

Figure 3.



15. Dr. Eisenach observes that the percentage of Unlimited I/F/S revenues consumed by sound recording [REDACTED]<sup>16</sup> This [REDACTED] has been driven by two factors [REDACTED]

[REDACTED] that are unrelated to *Phonorecords III*.

16. Amazon negotiated agreements with the three major record labels – Warner Music, Inc., Universal Music LLC, and Sony Music Entertainment (collectively, the “Majors”) –

[REDACTED]

[REDACTED]<sup>17</sup> Under Amazon’s earlier deals with the Majors, [REDACTED]

[REDACTED]

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<sup>16</sup> Eisenach RWRT ¶ 13; Mirchandani WDRT at Ex. A.

<sup>17</sup> Mirchandani WDRT ¶ 14-15.

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[REDACTED]<sup>18</sup> Under the deals Amazon struck with the labels [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>20</sup>

17. As I explained in my prior testimony, Amazon's 2019 agreements with the Majors were unrelated to *Phonorecords III*.<sup>21</sup> [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>22</sup> During these negotiations, the Majors never suggested that they might agree to [REDACTED] in response to [REDACTED] the outcome of *Phonorecords III*.<sup>23</sup> I do not understand Dr. Eisenach to disagree with any of this testimony regarding Amazon's 2019 agreements with the Majors.

18. Figure 4 shows Amazon's sound recording royalty costs for Unlimited I/F/S as a percentage of revenue each month from January 2017 to September 2020.

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<sup>18</sup> Mirchandani WDRT ¶ 16; *see* Trial Ex. 162 ([REDACTED]); Trial Ex. 163 ([REDACTED]); Trial Ex. 164 ([REDACTED]).

<sup>19</sup> Mirchandani WDRT ¶¶ 15, 20; *see* [REDACTED]  
[REDACTED]

<sup>20</sup> Mirchandani WDRT ¶ 20 n.12.

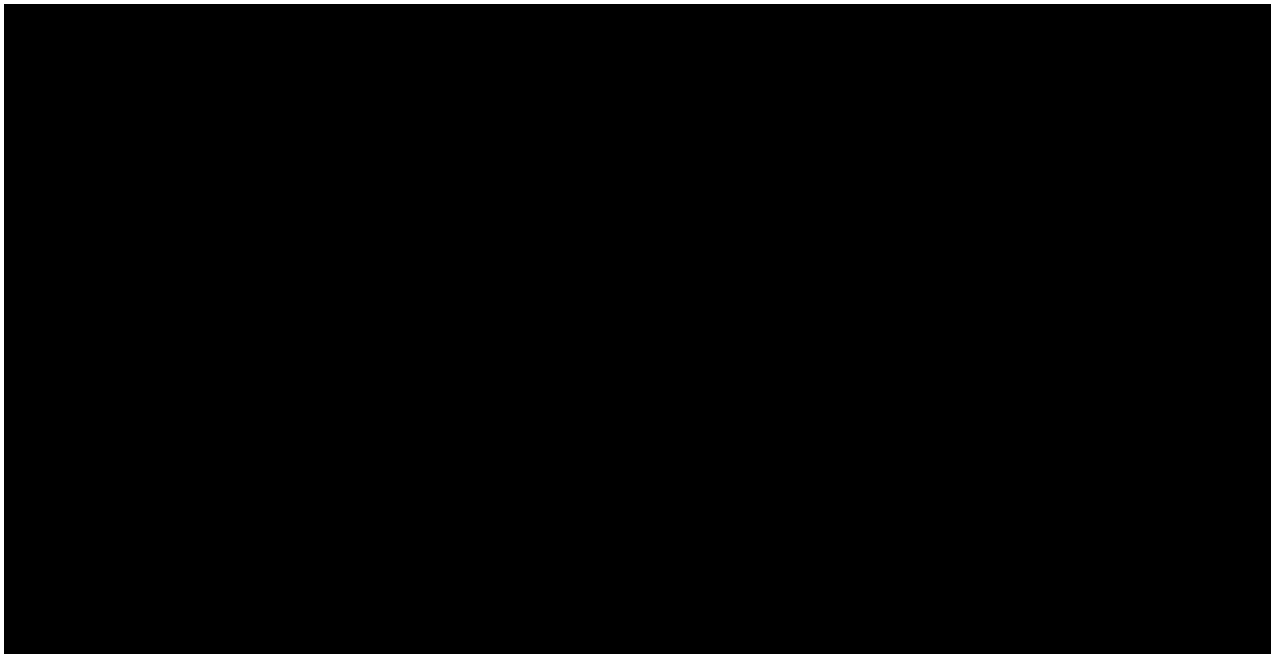
<sup>21</sup> *Id.* ¶¶ 14-24.

<sup>22</sup> *Id.* ¶ 15.

<sup>23</sup> *Id.* ¶¶ 13-25.



Figure 4.



19. While Amazon's 2019 agreements with the Majors contributed to [REDACTED]  
[REDACTED] revenues that sound recording royalties consumed over time,  
[REDACTED]  
[REDACTED] In January  
2017, Amazon's total revenues from Unlimited I/F/S [REDACTED]  
[REDACTED]<sup>24</sup> By September 2020, Amazon total monthly revenues from Unlimited I/F/S  
were [REDACTED]<sup>25</sup> When [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. Indeed, if Amazon's

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<sup>24</sup> Ex. 1.

<sup>25</sup> *Id.*

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per-subscriber revenues [REDACTED]

[REDACTED]

[REDACTED]<sup>26</sup>

20. Dr. Eisenach substantially overstates the decline in the percentage of Unlimited I/F/S revenues consumed by sound recording royalties by comparing individual months.

Specifically, Dr. Eisenach compares [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Comparing a peak month to a non-peak month says nothing about how Amazon's royalty costs are trending over time.

21. Amazon's combined royalty costs for Unlimited I/F/S consumed [REDACTED] [REDACTED] during every month of 2017 and the P3 Rate Activity Period. Amazon's total royalty costs consumed an average of [REDACTED] of revenue from Unlimited I/F/S from January 2017 to September 2020 [REDACTED]<sup>28</sup>

22. Dr. Eisenach claims to have conducted an analysis that shows that Amazon's combined royalty costs for all Amazon Music services, including Unlimited I/F/S and five other service categories, accounted for [REDACTED] of Amazon's reported revenue in 2017 than during the P3 Rate Activity Period.<sup>29</sup> Dr. Eisenach's analysis is uninformative and unreliable for at least two reasons. First, as Dr. Eisenach admits, the [REDACTED] between 2017 and the P3 Rate Activity Period is largely attributable to a change in the regulations concerning

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<sup>26</sup> *Id.*

<sup>27</sup> Eisenach RWRT ¶ 21 & app. C, tbl. C-1.

<sup>28</sup> Ex. 1.

<sup>29</sup> Eisenach RWRT ¶¶ 13-14 & Figure 1.

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the calculation of “Service Revenue” or “Service Provider Revenue” for Amazon Prime Music.<sup>30</sup>

Second, I understand that Dr. Eisenach used incomplete data for three of the six service categories he included in his analysis. Dr. Eisenach acknowledges that his analysis is missing six months of data for two service categories (Amazon Music Unlimited Bundle and Amazon Music Home (Alexa Single Device)).<sup>31</sup> And I understand documents produced by the Copyright Owners show that Dr. Eisenach’s analysis is missing a full year of data for a third service category (Amazon Music Free).<sup>32</sup>

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<sup>30</sup> *Id.* ¶¶ 19, 21 & n.32.

<sup>31</sup> *Id.* app. C at C-2.

<sup>32</sup> I understand the Copyright Owners produced MLC royalty data for Amazon Music Free from April 2019 to September 2019 only.

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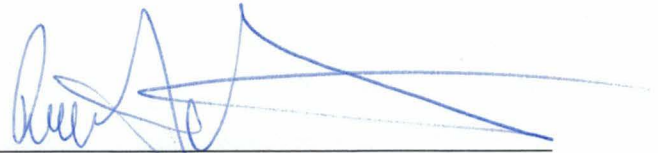
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**DECLARATION OF RISHI MIRCHANDANI**

I, Rishi Mirchandani, declare under penalty of perjury that the statements contained in my Written Supplemental Remand Testimony in the above-captioned proceeding are true and correct to the best of my knowledge, information, and belief. Executed this B<sup>th</sup> day of November, 2021 in Seattle, Washington.



Rishi Mirchandani

# EXHIBIT 1

## [Restricted]

# EXHIBIT 2

## [Restricted]

# Proof of Delivery

I hereby certify that on Monday, November 15, 2021, I provided a true and correct copy of the Written Supplemental Remand Testimony of Rishi Mirchandani (Public) to the following:

Johnson, George, represented by George D Johnson, served via ESERVICE at george@georgejohnson.com

Nashville Songwriters Association International, represented by Benjamin K Semel, served via ESERVICE at Bsemel@pryorcashman.com

Pandora Media, LLC, represented by Benjamin E. Marks, served via ESERVICE at benjamin.marks@weil.com

National Music Publishers' Association (NMPA) et al, represented by Benjamin Semel, served via ESERVICE at Bsemel@pryorcashman.com

Google LLC, represented by David P Mattern, served via ESERVICE at dmattern@kslaw.com

Spotify USA Inc., represented by Richard M Assmus, served via ESERVICE at rassmus@mayerbrown.com

Signed: /s/ Leslie V Pope